

**UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCT
LIABILITY LITIGATION

MDL Case No.: 2:08-md-1968

THIS DOCUMENT RELATES TO:

McCornack v. Actavis, 09-cv-0671
Vega v. Actavis, 09-cv-0768

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER
AND EVIDENTIARY SANCTIONS**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY PROVIDED that at such time and date as may be set by the Court in the United States District Court for the Southern District of West Virginia, Charleston Division, Plaintiffs Kathy McCornack, Daniel McCornack, and Ralph McCornack (Plaintiffs") will move the Court for a Protective Order and Evidentiary Sanctions prohibiting Defendants from referencing or relying on the September 19th 2011 deposition of Dr. Bliesner (taken in *Johnson v. Actavis Totowa, et al.* Oklahoma County, OK, State Court Case Number CJ-2009-5292) and any of the supplemental evidence referenced in Defendants' Motion To File Supplemental Evidence, and precluding Defendants from offering evidence or cross-examining Dr. Bliesner on any issues addressed at said deposition; and issue a protective order requiring Defendants to notify plaintiffs of all discovery directed to any of Plaintiffs' experts in any litigation or proceedings at the time any such discovery is propounded.

This motion is made pursuant to *Federal Rules of Civil Procedure*, Rule 26 and 37 and the court's inherent authority on the grounds that defense counsel took the deposition of Plaintiffs' expert without notifying Plaintiffs' counsel or obtaining prior authorization of this

Court. This motion is based upon this notice of motion and attached exhibits, the points and authorities and supporting declaration of counsel served and filed herewith, and such evidence and argument as may be presented at hearing.

Dated: September 30, 2011

/s/ Don A. Ernst

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: September 30, 2011

/s/ Don A. Ernst
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